IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 252 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE B.J.SHETHNA
and
Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RASHIKBHAI POPATBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 252 of 1998

MR ADIL MEHTA for Petitioner No. 1-2

MR AY KOGJE, APP for Respondent No. 1

CORAM : MR.JUSTICE B.J.SHETHNA
and
MR.JUSTICE M.S.SHAH

Date of decision: 13/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

This appeal is directed against the judgment and order dated 23.1.1998 passed by the learned Additional Sessions Judge, Surat in Sessions Case No. 276 of 1995 convicting accused No.2-Anil Sakharam Pawar (appellant No.2 herein) for the offence under Section 387 read with Section 114 IPC and sentencing him to SI for 7 years and also sentencing him to fine of Rs.200/- in default one month's SI and also convicting accused No. 1-Rasik Popatbhai Patel (appellant No.1 herein) for the following offences and sentencing him to imprisonments as indicated hereinbelow :-

Sec. 302 IPC RI for 20 years and fine of Rs.500/- i/d RI for one month.

Sec. 201 IPC SI for 7 years and fine of Rs.200/- i/d SI for one month.

Sec. 363 IPC SI for 7 years and fine of Rs.200/- i/d SI for one month.

Sec. 364 IPC RI for 10 years and fine of Rs.200/- i/d RI for one month.

Sec. 387 IPC SI for 7 years and fine of Rs.200/- i/d SI for one month.

The learned Sessions Judge also directed that accused No. 1 shall undergo all the sentences of imprisonment concurrently and that both the accused shall get the period of custody as under-trial prisoners as a set off against the sentences imposed by the judgment.

2. Accused No. 1 was charged with the offences of kidnapping minor Tejas, son of complainant Dr Labhubhai V. Patel and Dr Ramaben from their residence for the purpose of extortion of a large amount of money and committing murder of the said minor and also destroying the evidence by putting the dead body of minor Tejas in a jute bag and accused No. 2 was charged for the offence of abetting accused No. 1 in the said offence of extortion by accepting a parcel of large amounts.

3. The prosecution case as unfolded at the trial was as under :-

Complainant Dr Labhubhai V. Patel and his wife Dr Ramaben had a minor son called Tejas, aged nine years and studying in 4th Std. The complainant and his family

are residing at 210, Gayatrinagar Vibhag-1, Katargam Road, Surat. The complainant as well as his wife are doctors. Their hospital is on the ground floor and their residence is on the first floor. On 29.5.1995, Tejas was playing on the ground floor with his cousin Jignesh Jayarambhai Patel when accused No. 1-Rasik Popatbhai, brother of the brother-in-law (sister's husband) of complainant Dr Labhubhai and residing in the same building with the youngest sister of complainant Dr Labhubhai and her husband, offered Pepsi to minor Tejas and minor Jignesh and after minor Jignesh left, accused No. 1 kidnapped minor Tejas at about 2.30 PM. As their minor son did not return home, Dr Ramaben, mother of the minor gave information to the police which was recorded as "janvajog" entry (Exh. 16) at 6.00 PM. At about 2.30 PM on the same day, Rameshbhai had seen minor Tejas near People's Bank Cross Roads on Honda two wheeler. On the next day, i.e. 30.5.1995, between 7.00 and 7.30 in the morning, the complainant received a telephonic call from an unknown person who informed that a chit was put in the dust bin near the hospital of the complainant (which was on the ground floor and the residence was on the first floor) and that person called upon the complainant to act as per the message in the chit and to bring Rs. 10,00,000/-. On 31.5.1995, at about 8.30 PM, the complainant, father of minor Tejas, lodged FIR with the police (Exh. 15). Another chit was received by complainant Dr Labhubhai on 14.7.1995 to bring Rs.10,00,000/-. On 15.7.1995, the investigation was transferred to CID (Crime) and PW 24 Devendrakumar B Bhatt took over the investigation on 16.7.1995. On 23.8.1995 still another chit was received by complainant Dr Labhubhai calling upon him to bring Rs.11,05,000/- in a parcel divided into Rs, 10,00,000/-, Rs.1,00,000/- and Rs.5,000/- between 8.00 and 9.00 PM at a place near Avkar Cold Drinks House, Maruti Chambers, Lambe Hanuman Road, Varachha Road. The complainant produced the said chit before the police and a trap was laid. Accused No.2-Anil Sakharam came for receiving the monies from Dr Labhubhai. From the said accused, the name of accused No. 1 was disclosed and on 25.8.1995, accused No. 1-Rasik Popatbhai was arrested. He took the police to the place on the river bank where he had thrown the dead body of minor Tejas in a jute bag. The police drew the discovery panchnama on 25.8.1995 between 3.30 and 3.45 PM and on noticing the skeleton of the deceased boy, the police called the Forensic Science Laboratory experts and drew another panchnama between 4.00 and 5.00 PM. The inquest panchnama was thereafter made between 5.15 and 5.30 PM and the panchnama of the scene of offence was drawn at 6.15 and 6.30 PM. The post-mortem was done on 26.8.1995

and a team of medical experts submitted the post-mortem report that the skeleton was of a human being, was of a boy aged between 9 to 11 years and the height of that person was about 3.5 ft. Thereafter, accused No. 2 was also arrested and the police also recorded the statements of PW 16 Manjibhai Devshibhai Patel (Exh. 54, Pg. 146) from whose stationery shop, accused No. 1 had purchased papers and pen for writing the chits to the complainant demanding ransom, PW 15 Harshukbhai Patel (Exh. 53, Pg. 144), owner of the telephone booth, from where accused No. 1 had made calls to complainant Dr Labhubhai after kidnapping minor Tejas, PW 17 Rameshchandra Barkatali Jivani (Exh. 55, Pg. 147) from whose grocery shop accused No. 1 had purchased the jute bags and who identified the jute bag from which the skeleton of the boy was found as having been purchased from his shop under a bill. The police sent the chits received by complainant Dr Labhubhai demanding ransom to the hand writing expert and PW 21 Bhadreshkumar Sevantilal Shah (Exh. 64, Pg. 165), Assistant Examiner of the Hand Writing Bureau, Ahmedabad opined that the hand writing on the chits was that of accused No. 1-Rasik Popatbhai. At the trial, the prosecution examined PW 20 Dr Mohd. Ilyas (Exh. 62, Pg. 157), Assistant Professor of Forensic Science Medicines at the New Civil Hospital, Surat whose team had done the post-mortem and also the hand writing expert Bhadreshkumar S Shah, PW 14 Ishwarbhai J Patel from whose field the dead body of minor Tejas was found, also the panch witnesses for various panchnamas drawn including the inquest panchnama (Exh. 27. Pg. 80), recovery panchnama for the chits written by accused No.1 (Exh. 23, Pg. 70), panchnama of the scene of offence (Exh. 25, Pg. 75), panchnama of the jute bag from which the dead body was found (Exh. 29, Pg. 84) and also panchnama of the hand writing of accused No. 1 (Exh. 40, Pg. 102) and the panchnama of recovery of the Hero Honda Motor cycle produced by Vallabhbhai, brother of accused No. 1 (Exh. 34, Pg. 93), panchnama of search of the house of accused No. 1 (Exh. 38, Pg. 97) and the panchnama of discovery of the place where the dead body was concealed (Exh. 57, Pg. 152). The police also produced the Forensic Science Laboratory's reports at Exhs. 75 to 80 and examined various members of the investigation team over and above complainant Dr Labhubhai and his wife Dr Ramaben (parents of deceased minor Tejas) and PW 12 minor Jignesh Jayarambhai, cousin brother of deceased Tejas (Exh.48, Pg. 134).

4. After considering the oral as well as documentary evidence on record, the learned Sessions Judge came to the conclusion that the prosecution has established

beyond reasonable doubt all the links in the chain of events which led to only one conclusion that minor Tejas was kidnapped by accused No. 1-Rasik Popatbhai and that accused No. 1 had murdered the said minor boy and had also destroyed the evidence by throwing away the dead body in a jute bag. The learned Sessions Judge also held that accused No. 2 had participated in the crime to the extent that he had demanded extortion money from complainant Dr Labhubhai for which accused No. 2 was to get Rs.1,00,000/- and thus he had abetted accused No. 1 in the crime of putting minor Tejas to the risk of death for the purpose of committing extortion. The learned Sessions Judge thereupon by the judgment under appeal sentenced accused No. 1 to RI for 20 years and other periods of imprisonment which are to run concurrently with the main sentence and sentenced accused No. 2 to SI for 7 years.

5. At the hearing, Mr Adil Mehta, learned counsel for the appellant-accused made the following submissions:-

(i) There was delay of 36 hours in filing the FIR which is unusual considering the fact that the minor son of the complainant had disappeared.

(ii) The prosecution did not examine Rameshbhai who is alleged to have seen accused No.1 on 29.5.1995 on a Honda two-wheeler. So also the prosecution has not examined Dr and Mrs Baradia against whom the complainant had raised suspicion on 29/31.5.1995.

(iii) Complainant Dr Labhubhai did not produce the so-called chit received by him on 30.5.1995 before the police till 19.6.1995 nor did he refer to the same in his complaint lodged before the police on 31.5.1995 or in his further statement dated 1.6.1995. So also Dr Labhubhai did not produce the chits received on 14 & 18.7.1995 before the police till 23.8.1995.

(iv) Complainant Dr Labhubhai had stated that the hand-writing in the chit appeared to be familiar but till 23.8.1995 he did not inform the police as to whose handwriting it was.

(v) Accused No.2 was caught red-handed on 23.8.1985 but he was not arrested till 10.9.1995. Even the money bag which was given by the complainant to accused No.2 was given back to the complainant on 23.8.1995 itself.

(vi) The fact that no doubt was raised against accused No.1 till 23.8.1995 shows that accused No.1 was falsely implicated subsequently.

(vii) PW 14 Ishwarbhai from whose field the bones in question were recovered did not inform the police even though he had seen the bones in the first week of June, 1995.

(viii) There are several omissions and contradictions in the evidence of the witnesses. The panchas for the various panchnamas are got-up witnesses whose presence is doubtful or who were friends of the complainant. So also the evidence of the said witnesses cannot be said to be reliable.

(ix) Corrections were made in the post-mortem notes by Dr Mohd. Ilyas subsequently.

6. On the other hand, Mr AY Kogje, learned Addl. Public Prosecutor has supported the judgment under appeal and has submitted that the prosecution has clearly established beyond reasonable doubt all the links in the chain of events which led to only one conclusion that minor Tejas was kidnapped and killed by accused No.1 for the purpose of extorting money and that accused No.2 had abetted him for the offence of extortion which had gone to the extent of murdering minor Tejas.

The learned APP also made detailed submissions in reply to the aforesaid contentions raised by Mr Adil Mehta for the appellant-accused.

7. Having heard the learned counsel for the parties, we are clearly of the view that the conviction of both the appellant-accused for the offences in question is fully justified and that on the basis of the evidence led by the prosecution, there was only one conclusion possible and that was consistent only with the guilt of the accused and inconsistent with their innocence.

Contention No. (i)

8. As regards the contention that there was delay in filing the FIR, it has to be appreciated that minor Tejas was not to be found in the afternoon on 29.5.1995 i.e. around 2.30 PM. In the same evening at about 6 O'clock, PW 2 Dr Ramaben (Exh.16, Pg.60) had informed the police and the same was recorded as a "janvajog" entry. At that point of time, obviously the parents of the missing boy

would not be able to make any pointed accusation against a particular individual and since the boy was not to be found for two days, on 31.5.1995 the father of the missing boy lodged the complaint with the police (Exh.15 Pg.58) after receiving the extortion demand from a person who had not disclosed his name or identity. Such conduct on the part of the complainant and his wife would, therefore, be quite natural and it cannot be said that there was any undue delay in lodging the FIR with the police.

Contention No. (ii)

9. As regards non-examination of Dr and Mrs Baradia, when the police lodged the complaint on 31.5.1995 and started recording the statements, they would obviously ask the parents of the missing boy as to whether they suspected any foul play from any person known to them i.e. whether anybody had any enmity against the complainant and his wife. It was in response to such a query that Dr Ramaben, wife of the complainant and mother of the missing boy, had stated that earlier the complainant and his wife were carrying on their medical practice with Dr Baradia and on account of certain differences they had separated and that Dr and Mrs Baradia had some ill-feeling against the complainant and his wife Dr Ramaben. Dr Ramaben had further stated that since Rameshbhai, a patient of Dr Labhubhai had seen minor Tejas on a Honda two-wheeler at 2.30 PM on 29.5.1995 and since Dr Baradia also had a Kinetic Honda scooter, they had suspicion against Dr Baradia.

The police had, therefore, recorded the statement of Dr and Mrs Baradia on 1.6.1995 wherein they had denied any such animosity or enmity and they had stated that they could not even remotely entertain any idea of kidnapping the son of complainant Dr Labhubhai. Ultimately, when it came out in the investigation after a trap was laid on accused No.2 while collecting the extortion money from complainant Dr. Labhubhai that he was acting at the instance of accused No.1, the investigation was carried out and on collecting all the relevant evidence, the police came to the conclusion that it was accused No.1 who had committed the offence of kidnapping and murdering minor Tejas and that accused No.2 had abetted for the extortion exercise. In this view of the matter, the initial suspicion raised by the mother of the missing boy against Dr and Mrs Baradia could not stand even for a second and, therefore, the prosecution rightly did not examine Dr and Mrs Baradia. Hence non-examination of Dr and Mrs Baradia cannot help

the defence case nor does it make any dent in the prosecution case against the two accused charged with the offences under consideration.

So also non-examination of Rameshbhai does not carry the defence case any further as Rameshbhai had stated that he had seen minor Tejas on a Honda two-wheeler near the People's Bank Cross Roads at about 2.30 PM on 29.5.1995. Because the prosecution case is entirely based on circumstantial evidence and Rameshbhai happens to be related to accused No.1 (distant brother-in-law), non examination of Rameshbhai cannot be fatal to the prosecution.

Contention No. (iii)

10. As regards the contention about late production of chits before the police authorities, it is required to be noted that when their son was missing from 29.5.1995 afternoon and the complainant and his wife received the chit from an unidentified stranger wherein dire threats were mentioned if the police were informed, it was not unnatural on the part of the complainant and his wife not to produce the chits before the police and to wait for some positive developments even if it meant paying a few lakhs of rupees to get back their kidnapped son hale and hearty and in one piece. Hence, the delay of 20 days in producing the first chit before the police cannot be fatal to the prosecution case. As regards the other chits, it is required to be noted that they are subsequent chits received from that unidentified caller. It was evident that the unidentified caller and author of the chits was aware of the fact that the complainant had approached the police authority and had tipped them about the extortion demands being received by the complainant and, therefore, the subsequent chits also disclosed the fact that the kidnapper was aware of the police trying to trace the kidnapper. In fact, the chit received by the complainant on 23.8.1995 was brought to the notice of the police authorities i.e. Mr DB Bhatt, Police Inspector, CID (Crimes) on that very day and that is why the police arranged the trap to catch the person who was deputed by the kidnapper to collect Rs.11,05,000/- on behalf of the kidnapper. If the chit dated 23.8.1995 had not been brought by the complainant to the notice of the Investigating Officer, such a trap could never have been laid. Hence, the so-called delay in production of the earlier chits before the Investigating Officer does not detract from the prosecution case against the accused.

Contention No. (iv)

11. As regards the contention that the complainant thought that the hand-writing in the extortion chits was familiar, it is required to be noted that accused No.1 being the brother of the husband of the younger sister of the complainant, and residing in the same building, the complainant used to take help of accused No.1 for writing case papers when the complainant's regular staff would not be available. This would mean that the complainant has come across the hand-writing of accused No. 1 only occasionally and cursorily and, therefore, when the complainant found that the hand-writing in the chits were familiar, it would not mean that he would be able to identify the author of the chits. In fact, because accused No.1 was quite closely related to the complainant and because accused No.1 was all throughout pretending to assist the complainant and his family members in tracing out the missing boy, the complainant and his family members would not even think of connecting accused No. 1 with the crime and, therefore, it would be natural for them not to suspect accused No. 1 till accused No. 2, who had gone to collect the extortion money, disclosed the name of accused No. 1.

Contention No. (v)

12. As regards non-arrest of accused No.2 on 23.8.1995, it is important to note that till accused No.2 had gone to collect the parcel containing monies of the complainant and he was caught red-handed with the parcel of monies which he had received from the complainant, neither the complainant nor the police had any clue as to who was the kidnapper and, therefore, the police was required to make detailed investigation about the kidnapper and his modus operandi and, therefore, if accused No.2 had been arrested on 23.8.1995 and if the main culprit had remained at large, the main culprit would have gone into hiding. Therefore, the Investigating Officer thought it fit not to arrest accused No.2 immediately and to wait till all the information and evidence was collected by the police. Hence, it cannot be said that the Investigating Officer had acted unfairly or that the prosecution case was weakened.

Contention No. (vi)

13. As regards the argument that accused No. 1 was

falsely implicated and that that is why no finger was pointed against him till 23.8.1995, the same is clearly devoid of merit. Accused No. 1 was the brother of the husband of the younger sister of the complainant and accused No. 1 was also staying on the upper storey of the same building in which the complainant and his wife were residing and were carrying on their medical practice in the hospital on the ground floor. Accused No. 1 was also pretending to assist the complainant and his wife in their efforts in tracing out the missing boy. Under the circumstances, it is but natural that till accused No.2 (sent by accused No. 1 for collecting the extortion money from the complainant) disclosed the name of accused No. 1, neither the complainant nor any other person would ever suspect that accused No. 1 was the kidnapper. In fact, there would be no reason whatsoever for the complainant and his wife to make any false accusation against accused No. 1 for the simple reason that they would be fully conscious of the fact that by making a false accusation against accused No. 1, they would not only put accused No. 1 in jeopardy, but they would even put the married life of the younger sister of the complainant into jeopardy. Hence, the argument about accused No. 1 being falsely implicated in the crime is thoroughly baseless and does not stand any scrutiny.

Contention No. (vii)

14. As regards the argument as to why PW 14 Ishwarbhai did not immediately inform the police after noticing the bones in his field, it is necessary to note that the field of Ishwarbhai is situated on the river bank which has lots of bushes and it is frequented by animals and, therefore, when Ishwarbhai noticed some bones in his field, he thought that the same may be of some animal and ultimately with the onset of monsoon and the stench of the dead body having disappeared during monsoon rains, he would naturally not think of informing the police. It was only after accused No.2 disclosed the name of accused No.1 on 23.8.1995 and it was only on 25.8.1995 when accused No.1 took the Investigating Officer with the panchas to the place where he had thrown the dead body of minor Tejas in a jute bag that PW 14 Ishwarbhai, the owner of the filed where the jute bag was thrown, came to realize that the jute bag contained the dead body of a kidnapped boy. Hence, no fault can be found with the prosecution case merely because Ishwarbhai had not informed the police about the bones that he had seen in his field earlier.

Contention No. (viii)

15. As regards the veracity of the panch witnesses, none of them have been shaken in their cross-examination. All the panchas are found to be independent witnesses and nothing is brought out in their cross-examination nor in the argument as to why they should falsely implicate the accused. So also the evidence of the shop keeper from whom accused No. 1 had purchased the stationery for writing chits, the grocery shop keeper from whom accused No. 1 had purchased the gunny bags and the owner of the telephone booth from where accused No. 1 had made calls to the complainant are all natural and independent witnesses and nothing has been brought out in their cross-examination nor in the arguments to shake their credit-worthiness. Their evidence is quite independent and natural and their evidence clearly connects accused No.1 with the crime, more particularly when the hand-writing expert has also clearly opined that accused No.1 was the author of the chits which accused No.1 had started writing to the complainant from 30.5.1995 onwards (i.e. immediately after minor Tejas was kidnapped) till 23.8.1995.

Contention No. (ix)

16. As regards the argument that the post-mortem note contains some words added subsequently, we have carefully gone through the original post-mortem note at Exh.63 (Pg.162). The said post-mortem note, even without referring to the alleged subsequent writings, contains the following remarks:-

> "..... In right temporal area there is bluish colour contusion of 3 cms. X 2.5 cms.
>
> ..... All bones belong to one human man aged about (9 - 11 yrs.). Height of the person 108 + 2.5 cms."

As against the above undisputed remarks in the post-mortem note, the grievance is made in respect of the following endorsements:-

(1) All bones belong to human being.
(2) All bones are of same individual.
(3) All bones belong to male sex.
(4) The age of the person is about 9 yrs.

(5) The stature of the person is 108 + 2.5 cms..
(6) There is a contusion over the right

temporal area.

Thus, it is clear that the aforesaid remarks are otherwise also to be found in the observations made in the post-mortem note about which there is no dispute except that "9 yrs." is subsequently mentioned before "9-11 yrs.". The grievance is, therefore, without any substance. All that the remarks narrated in (1) to (6) above do is to put at the same place what was otherwise stated earlier spread out in the various observations in the post-mortem note.

17. Having carefully examined the chits which the complainant had received from 30.5.1995 onwards and also the hand-writings of accused No.1 which were found from his books in his village and the opinion dated 30.10.1995 of the hand-writing expert along with his reasons at Exhs. 65 and 67 (Pg.167 onwards) and also the evidence of the hand-writing expert Mr Bhadreshkumar Sevantilal, Assistant Examiner of questioned documents at Exhs.21 and 64 (Pg.165) of the Hand-writing and Photography Section, Ahmedabad who is a qualified person possessing Diploma in Document Examination awarded by the National Institute of Criminology & Forensic Science, New Delhi and also having undergone practical and theoretical training at the Forensic Science Laboratories at New Delhi and also the practical training at the offices of the institutes attached to the Courts in various States and with 8 years experience as Assistant Examiner of questioned documents and in view of the fact that the specimen is admittedly of accused No.1 as well as the natural hand-writing recovered from the native place of accused No.1 (where accused No.1 had studied), we are satisfied that the learned Sessions Judge has not committed any error in holding that accused No.1 was the author of the chits received by the complainant for demanding extortion money.

18. Having considered the entire material on record and after careful examination of the arguments urged on behalf of the appellant-accused, we are satisfied that the prosecution has proved beyond reasonable doubt all the links in the chain of circumstantial evidence to connect accused No.1 with the offence of kidnapping and murdering minor Tejas in order to extort money from the parents of the deceased boy and also of the offence of destroying the evidence by throwing away the dead body of the deceased boy in a field near the river. We, therefore, do not find any substance whatsoever in the appeal of accused No.1.

Accused No. 2

19. As far as accused No.2 is concerned, Mr Adil Mehta, learned counsel for the appellants submitted that except the fact that accused No.2 had gone to collect the monies from the complainant, there was no evidence against the said accused to find him guilty of the serious offence of extortion under Section 387 IPC.

20. The argument is misconceived for the simple reason that accused No.2 was asked by accused No.1 to collect money from the complainant from a public place on a road. If a huge amount of Rs.11,00,000/- was to be collected by accused No.1 from the complainant as a part of any legitimate business or activity, there would be no reason why accused No.2 would not be asked to collect the money either from the office or the residence of the complainant. The very fact that accused No.2 was asked by accused No.1 to collect money from the complainant from a public road and that for the said work accused No.1 had promised accused No.2 a sum of Rs.1,00,000/- and the complainant asked accused No. 2 whether Tejas was alive all this is sufficient to show that accused No.2 was aware of the fact that accused No.1 was committing a serious crime. Hence it cannot be said that accused No.2 was not guilty of the offence punishable under Section 387 IPC. We, therefore, do not find any substance in the appeal of accused No.2 either. As stated by Mr Adil Mehta, the said accused No.2 has already undergone the sentence.

21. As regards the reliance placed by Mr Mehta for the appellant-accused on the decision of the Apex Court in Prem Prakash Mundra vs. State of Rajasthan, JT 1998 (1) SC 659 and Hargovandas Devrajbhai Patel vs. State of Gujarat, JT 1994 (4) SC 384, these decisions were rendered in the facts of those particular cases. In Prem Prakash Mundra (Supra), the accused had not stated that he had buried the dead body and the explanation of the accused that he had come to know about the place of offence from the talks amongst other persons who where with the accused in the lock-up and that he had not voluntarily taken the police to that place but he was forcibly taken there and, therefore, the Apex Court held that the only conclusion which could be drawn from the statement of the accused was that he knew the place where the dead body was buried and as he had not stated stated that he had buried it, he could not be connected with the offence on the basis of that circumstance.

In the facts of the instant case, however, the

authorship of the chits demanding extortion money is found to be that of accused No. 1 beyond reasonable doubt and so also the jute bag in which the skeleton of the missing boy was discovered was found to have been purchased by accused No. 1 from the owner of the grocery shop PW 17 Rameshbhai Barkatali Jivani and the evidence of the owner of the telephone booth from where the accused had made calls to the complainant in Hindi has also completed the links in the chain of evidence. There was no other person who could have known the place where the jute bag containing the dead body of the minor missing boy was thrown. Hence, the decision in Prem Prakash Mundra (Supra) does not support the argument urged on behalf of accused No. 1.

22. Similarly, in Hargovandas Devrajbhai Patel (Supra), the Court found several discrepancies in evidence of witnesses identifying the dead body. Even the wife of the deceased was not examined and the doctors evidence was that it was not possible to identify the dead body as it was highly decomposed. Hence, the Court held that the prosecution has failed to establish the identity of dead body to be that of the deceased for whose murder the accused were charged.

On the other hand, in the facts of the instant case, the parents of the deceased have given description of the minor boy aged 9 years which tallies with the description given by the medical experts on examination of the skeleton of the missing boy and the other circumstances established beyond reasonable doubt also connect the accused with the crime. Hence, the decision in Hargovandas Devrajbhai Patel (Supra) on the appreciation of the evidence in the facts of that case cannot carry the case of accused No. 1 any further.

23. In view of the above discussion, the appeal is devoid of merit and deserves to be dismissed. Accordingly, we confirm the order of conviction and sentence passed by the learned Sessions Judge against both the accused in Sessions Case No.276 of 1995. The appeal is accordingly dismissed.

(B.J. Shethna, J.)

(M.S. Shah, J.)
sundar/-